

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Working Group on discrimination against women and girls

Ref.: AL SDN 3/2022
(Please use this reference in your reply)

24 June 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 45/3, 42/22, 43/4, 41/12, 43/16 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of arbitrary detention, enforced disappearance, torture and ill-treatment of hundreds of peaceful protesters, human rights defenders and people with a perceived affiliation with the opposition to the military coup of 25 October 2021.**

Concerns regarding human rights violations against individuals and civil society actors on the basis of perceived support or affiliation with the opposition have been the subject already of previous communications by a number of Special Procedures' mandate-holders, including [SDN 2/2022](#) and [SDN 6/2021](#). We thank your Excellency's Government for its response of [11 March 2022](#) to the Joint Urgent Appeal SDN 2/2022. However, we regret that it has failed to provide a response to the allegations presented in the Joint Urgent Appeal SDN 6/2021, despite the seriousness of the matter. We urge your Excellency's Government to provide precise and detailed responses at the earliest opportunity.

According to the information received:

On 25 October 2021, the military took over power from the transitional government in a military coup and declared a state of emergency. On 26 December 2021, the military issued Emergency Order No. 3/2021, providing immunity and extensive law enforcement powers to the regular security forces, including the General Intelligence Service (GIS). Numerous cases of arbitrary detention, including incommunicado detention, of peaceful protesters, human rights defenders and supporters of the opposition to the military coup were reported, as well as several cases of enforced disappearance.

Reportedly, the Government announced the lifting of the state of emergency although the corresponding decree has yet to be made public.¹

¹ <https://sudan.un.org/en/184863-statement-adama-dieng-un-designated-expert-situation-human-rights-sudan-end-his-visit>

Arbitrary detention and enforced disappearance

In April 2022, the Designated Expert and the UN Joint Human Rights Office in Sudan (“Joint Office”) reported the detention of more than 1000 people between 25 October 2021 and 3 March 2022 for opposing the military coup, including at least 143 women and 157 children.² It was further reported that at least 85 persons, including one woman and 11 children, were killed and many others injured by Sudan’s joint security forces during protests. The Joint Office has documented four cases of enforced disappearance.

It is reported that many detainees were held incommunicado for periods ranging from one day to two months in unknown locations. The Sudanese authorities have failed to provide information to the families or legal representatives on their fate and whereabouts or refused to acknowledge their detention. Notably, under international law, prolonged incommunicado detention amounts to enforced disappearance. Moreover, any deprivation of liberty followed by a refusal to acknowledge it or by concealment of the fate or whereabouts of the disappeared person amounts to an enforced disappearance. Hence, pursuant to the allegations received, beyond those fully documented, the number of enforced disappearances actually perpetrated may be in the hundreds. In Khartoum State, according to credible sources, in most cases the joint security forces detained persons for organizing or participating in protest activities in police detention facilities before either releasing them or transferring them to prisons in Khartoum state without due process guarantees and judicial safeguards. Some detainees in Khartoum have been further transferred from Soba prison to other prisons located in Port Sudan and White Nile states, thus adding greater obstacles for their families and legal representatives to access them. It is further reported that in Khartoum protesters are often transferred to two detention facilities in Khartoum and North Bahri by the Criminal Investigation Department (CID). Allegedly, the detention facilities’ officials denied access of detainees to basic services without prior approval by the CID.

Torture and ill-treatment of detainees, including children

It is further alleged that the Sudanese joint security forces, including regular and anti-riot police, the Central Reserve Police (CRP), and military units from the Sudan Armed Forces (SAF), along with ununiformed agents, detained people during protests, in the streets, in the workplace, in hospitals, in private vehicles or in their homes. The joint security forces reportedly looted and confiscated private property and engaged in excessive use of force in their response to protests. They also allegedly committed widespread acts of torture and ill-treatment against hundreds of detainees, including severe beatings with gunstocks, batons and iron bars; beatings to their stomach and head while being blindfolded; forcing children to strip naked in front of adults; firing teargas inside private cars; and threats of killings and sexual violence. At least 14 persons were reportedly victims of rape by the joint security forces in the vicinity of protests in Khartoum.

Additionally, many children were allegedly tortured, ill-treated and placed in detention alongside with adults. It is reported that, while the authorities failed

² A/HRC/50/22

to inform relatives of their fate and whereabouts, the joint security forces tortured and ill-treated children, including violently forcing children to strip naked, beatings with fists and various objects, and hammering nails and burning cigarettes on the skin. It is also reported that authorities threatened relatives with retaliation should they submit official complaints.

The involvement of different security forces involved in the detentions makes it challenging for relatives and legal representatives to identify which authority is responsible for each act of detention, which is further fuelling impunity for perpetrators. It is also reported that the joint security forces have in several cases closely monitored and harassed former detainees following their release.

We wish to express our concern at the seriousness of these allegations, which, if confirmed, would amount to gross violations of international human rights law by the Sudanese joint security forces. We reiterate our concern at the alleged use of arbitrary detention and enforced disappearance, including incommunicado detention, of more than 1000 people, including at least 157 children. We are further concerned by the repeated allegations received concerning outright refusals by the Sudanese authorities to acknowledge detention or to ascertain the fate and whereabouts of all persons deprived of their liberty, and the failure to ensure due process guarantees and judicial safeguards. The allegations of acts of torture and ill-treatment of detainees appear to imply a consistent pattern by the authorities aimed at intentionally causing physical and psychological harm on women, men and children.

Similarly, we are seriously concerned because of the lack of official information about the physical and psychological integrity of all persons deprived of their liberty due to their dissenting opinion or the exercise of their freedom of expression, their participation in protests against the military coup, and their access to adequate medical care and treatment while deprived of their liberty. We wish to recall that the failure to acknowledge a deprivation of liberty by State agents or the refusal to acknowledge detention are constitutive elements of an enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned. Also, by apprehending and detaining individuals, including children and women human rights defenders, the State assumes responsibility for their lives and physical integrity. Due to the heightened duty of care, States must take the necessary measures to protect the lives of all individuals deprived of their liberty. In the case of women, children and individuals pertaining to especially vulnerable groups, this duty is strengthened. Inadequate or substandard conditions of detention can be a factor contributing to deaths and serious bodily injury while in detention, and when such conditions are seriously inadequate, they can constitute greater risk to life and long-term irreparable damage.

If confirmed, these allegations would constitute prima facie gross violations of fundamental human rights, including the right not to be arbitrarily deprived of liberty, not to be subjected to enforced disappearance, the right to life, to be free from torture and other ill-treatment, the right to recognition as a person before the law, and the right to freedom of peaceful assembly, pursuant to, among others, international human rights instruments for which Sudan is a State party. More specifically, the International Covenant on Civil and Political Rights (ICCPR), ratified in March 1986; the International Convention for the Protection of All Persons from Enforced Disappearance (ICCED), acceded to in August 2021; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (CAT), ratified in August 2021;

and the Convention on the Rights of the Child (CRC), ratified in August 1990.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations;
2. Please provide information on the current status of Emergency Order No. 3/2021 of 24 December 2021, and the date of the lifting of the state of emergency;
3. Please provide information on the steps taken by the relevant authorities to investigate the allegations of arbitrary detention and enforced disappearance, including incommunicado detention, to ascertain the fate and whereabouts of disappeared persons and to ensure the protection of their human rights, including the rights to life, to liberty, to personal security, to recognition as a person before the law, and to physical and moral integrity. Please inform if the relatives or legal representatives have been adequately informed;
4. Please provide information on measures taken by the Sudanese authorities, including the military leadership, to carry out an immediate, impartial and transparent investigation, in accordance with applicable international standards, and about their outcomes, including the identification of perpetrators and effective access to justice for victims. In addition, please indicate if any judicial or other inquiry has been undertaken in relation to the above-mentioned allegations. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information on the legal basis for the detention of peaceful protesters and persons with perceived affiliation with the opposition, including children. Please explain how these actions are consistent with Sudan's obligations under international human rights law;
6. Please provide updated information, disaggregated by sex and age, on the number, state of health and the whereabouts of individuals currently still detained in connection to the military coup of 25 October 2021 and related protests, the status of the legal process initiated against them, and whether the detainees have access to a legal

representation of their choice and their families;

7. Please provide information on the measures taken to assure the compilation and maintenance of updated official records and registers of persons deprived of their liberty, and to make them promptly available, upon request, to judicial and other competent authorities and to any persons with a legitimate interest in this information, including relatives of the persons deprived of their liberty and their legal representatives;
8. Please inform on the measures taken to ensure that all persons detained by the Sudanese joint security forces in the context of the military coup and related protests were brought promptly before a judge or other officer authorized by law to exercise judicial power and either tried or released. Please also provide information as to the measures taken to ensure their right to legal representation, immediately upon their arrest and throughout any following judicial procedure. If this did not happen, kindly explain why and which measures have been adopted to ensure that those subjected to unlawful arrest or detention obtain compensation for the harm suffered;
9. Please provide information on the measures taken to determine the protection needs of each detainee, including women and children, the state of health, any information regarding women's access to reproductive health and services and any other measures to prevent serious and irreparable damage to their life and personal integrity, and that they have access to medications and other relevant medical treatment;
10. Please provide information on measures taken to ensure that children are not unlawfully or arbitrarily deprived of their liberty, or subjected to torture or other cruel, inhuman or degrading treatment or punishment. In cases when the deprivation of liberty of children is envisaged, please specify measures taken to ensure that the deprivation of liberty is only used as a measure of last resort, and that special guarantees are provided in accordance with international human rights law, especially article 37 of the Convention on the Rights of the Child;
11. Please explain the measures taken to ensure that persons who may oppose the military coup, including women human rights defenders, in particular those working for women's rights can carry out their legitimate work without fear for their basic human rights.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications' reporting [website](#). They will also subsequently be made available in the communications report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the

accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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Irene Khan

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Mary Lawlor

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Melissa Upreti

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Should these allegations be confirmed, they would raise concerns regarding violations of articles 6, 7, 9, 10, 14, 16, 19, 21 and 22, to be read alone and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Sudan in 1986, as well as articles 3, 5, 9 and 19 of the Universal Declaration of Human Rights (UDHR). The ICCPR and UDHR guarantee the rights to life, to liberty and to personal security, to freedom from arbitrary arrest or detention, to freedom from torture and other cruel, inhuman or degrading treatment or punishment, and freedom of opinion and expression, freedom of peaceful assembly, and the right to an effective remedy. Where the best interests of the child are concerned, we would also like to emphasize article 24.1 of the ICCPR and articles 3, 6, 9, 12, 13, 15, 19, 20, 37 and 40 of the Convention on the Rights of the Child, ratified by Sudan in August of 1990.

In this regard, we would also like to remind your Excellency's Government of the absolute prohibition of torture and other forms of ill-treatment, and its obligation to promptly investigate allegations of torture, take effective measures to prevent acts of torture within its jurisdiction, under articles 1, 2, 12, 13, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Sudan ratified in 2021. The right to life and freedom from torture and other ill-treatment are non-derogable under international law and must be protected and respected under all circumstances, even in times of emergency.

Similarly, it is noteworthy that the prohibition of enforced disappearance and the corresponding obligation to investigate and punish perpetrators have attained the status of *jus cogens*. Pursuant to article 1 of the International Convention on the Protection of All Persons from Enforced Disappearance (ICPED), acceded to by Sudan in August 2021, enforced disappearance is prohibited under any circumstances. Notably, the facts here reported raise concerns under articles 2, 12, 17, 18, 19, 20, 24 and 25 of the ICPED. More specifically, as it concerns, *inter alia*, the definition of enforced disappearance; the right to report the case to the competent authorities and to carry an effective investigation; the prohibition of secret detention, the right of family relatives or legal representatives to access information; and the right to know the truth, to search for the disappeared and to obtain reparations.

We would also like to refer your Excellency's Government to article 9 of the UDHR, prohibiting arbitrary detentions, and article 9 of the ICCPR, enshrining the right to liberty and security of person. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the

ICCPR.³ Additionally, as per the jurisprudence of the Working Group on Arbitrary Detention, any detention due to the peaceful exercise of rights is arbitrary, and enforced disappearances constitute a particularly aggravated form of arbitrary detention. As stated by the Human Rights Committee in its General Comment No. 24, and reiterated in the jurisprudence of the Working Group on Arbitrary Detention, the deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time.⁴ We would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR, is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.⁵ In accordance with General Comment No. 24, every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation.⁶

Moreover, as established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations. The Human Rights Committee further stipulated in General Comment No. 36 that the loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life, which can only be rebutted on the basis of a proper investigation by the State (paragraph 29). It further noted that extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life (paragraph 57). The deprivation of liberty followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable (paragraph 58). In General Comment No. 37, the Human Rights Committee further stipulated that the use of unnecessary or disproportionate force or other unlawful conduct by State officials during an assembly may breach articles 6, 7 and 9 of the ICCPR (paragraph 98), as regards the right to life, the prohibition of torture and ill-treatment and the right to liberty and security of the person.

Furthermore, the Working Group on discrimination against women and girls noted in its report on women deprived of liberty (A/HRC/41/33) that State authorities responding to conflict may detain and confine women in the service of their own cause. Women who are able to escape from non-State armed groups or who are simply suspected of having been involved with them have been held by the military and other State actors in camps, prisons and other detention sites, rather than receiving the services they need. Measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups, and sometimes even women human rights defenders. The Working Group further recommended States to support and protect women's engagement in public and political life, including the work of women human rights defenders, and

³ CCPR/C/GC/34 para. 23.

⁴ CRC/C/GC/24, para. 85. See also Opinion 73/2018, para. 65.

⁵ See A/HRC/30/37, paras. 2, 3 and 11.

⁶ CRC/C/GC/24, para. 90.

eliminate any laws or policy measures designed to criminalize the public roles of women.

In addition, the Working Group on discrimination against women and girls' in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In a joint declaration, the Working Group on discrimination against women and girls emphasized that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society.

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, establishes the duty of States to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19). We recall that the full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

The Guiding Principles for the search for disappeared persons further stipulate that the search should be conducted under the presumption that the disappeared person is alive, regardless of the circumstances of the disappearance, the date on which the disappearance began and when the search is launched (principle 1). Moreover, while the search should begin without delay (principle 6), the Guiding Principles also stipulate that the search is a continuing obligation (principle 7).

Furthermore, the United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets out necessary protection by the State. In particular, articles 2 and 3 state that no State shall practice, permit or tolerate enforced disappearances and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We are further drawing your Excellency's

Government's attention to the absolute and non-derogable prohibition against enforced disappearances (articles 2 and 7). The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, articles 9-13, providing for the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal. Article 14 further establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance. The Declaration also stipulates that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

Lastly, we also make reference to the Working Group on Enforced or Involuntary Disappearance's General comment on women affected by enforced disappearances (A/HRC/WGEID/98/2). The Working Group also notes the enhanced obligations of the State with regard to the enforced disappearance of children (A/HRC/WGEID/98/1). More concretely, the requirement to acknowledge the special urgency of resolving cases of enforced disappearances involving children, in which States should create or adapt already-established institutions to search for these disappeared children and ensure their care in the event they are found (paragraph 25).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.